

## § 24.320

## 47 CFR Ch. I (10–1–99 Edition)

all members of the applicant's control group); and

(iii) Certify that the personal net worth of the applicant (if an individual), each affiliate and each person that hold an interest in the applicant is less than \$40 million.

(d) *Audits.* Applicants and licensees claiming eligibility under this section shall be subject to random audits by the Commission.

(e) *Definitions.* The terms affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, gross revenues, members of minority groups, passive equity, personal net worth, and small business used in this section are defined in § 24.320.

(f) *Unjust enrichment.* Designated entities using installment payments, bidding credits or tax certificates to obtain a narrowband PCS license will be subject to the unjust enrichment provisions contained in § 1.2111 of this chapter.

[59 FR 44070, Aug. 26, 1994, as amended at 59 FR 50511, Oct. 4, 1994; 63 FR 2348, Jan. 15, 1998]

### § 24.320 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 24.309–24.315 of this subpart, unless otherwise specified in those sections.

(b) *Small Business; Consortium of Small Businesses.*

(1) A *small business* is an entity that:

(i) Together with its affiliates has average annual gross revenues that are not more than \$40 million for the preceding three calendar years;

(ii) Has no attributable investor or affiliate that has a personal net worth of \$40 million or more;

(iii) Has a control group all of whose members and affiliates are considered in determining whether the entity meets the \$40 million annual gross revenues and personal net worth standards; and

(iv) Such control group holds 50.1 percent of the entity's voting interest, if a corporation, and at least 25 percent of the entity's equity on a fully diluted basis, except that a business owned by members of minority groups and/or women (as defined in paragraph (c) of this section) may also qualify as a

small business if a control group that is 100 percent composed of members of minority groups and/or women holds 50.1 percent of the entity's voting interests, if a corporation, and 50.1 percent of the entity's total equity on a fully diluted basis and no single other investor holds more than 49.9 percent of passive equity in the entity.

(2) *Attribution and Aggregation of Gross Revenues and Personal Net Worth.*

(i) Except as specified in paragraphs (b)(1) (iii) and (iv), the gross revenues of the applicant (or licensee) and its affiliates, and other persons that hold interests in the applicant (or licensee) and their affiliates shall be considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is a small business.

(ii) The personal net worth of individual applicants (or licensees) and other persons that hold interests in the applicant (or licensee), and their affiliates, if less than \$40 million, shall not be considered for purposes of determining whether the applicant (or licensee) is eligible to bid as a small business.

(iii) Where an applicant (or licensee) is a consortium of small businesses, the gross revenues of each small business shall not be aggregated.

(iv) The gross revenues and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered so long as:

(A) Such person holds no more than 25 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's or control group; and

(B) The applicant has a control group that owns at least 25 percent of the applicant's total equity and, if a corporation, holds at least 50.1 percent of the applicant's voting interests.

(v) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant shall not be considered so long as:

(A) Such person holds no more than 49.9 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's control group; and

(B) The applicant has a control group that consists entirely of members of

minority groups and/or women and that owns at least 50.1 percent of the applicant's total equity and, if a corporation, at least 50.1 percent of the applicant's voting interests.

(3) A *small business consortium* is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business.

NOTE TO PARAGRAPH (B): Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(c) *Business Owned by Members of Minority Groups and/or Women.* A *business owned by members of minority groups and/or women* is an entity:

(1) That has a control group composed 100 percent of members of minority groups and/or women who are United States Citizens, and

(2) Such control group owns and holds 50.1 percent of the voting interests, if a corporation, and

(i) Owns and holds 50.1 percent of the total equity in the entity, provided that all other investors hold passive interests; or

(ii) Holds 25 percent of the total equity in the entity, provided that no single other investor holds more than 25 percent passive equity interests in the entity. In a partnership, all general partners must be members of minority groups and/or women. Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(d) *Gross Revenues.* *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited quar-

terly financial statements for the relevant period.

(e) *Members of Minority Groups.* *Members of minority groups* include Blacks, Hispanics, American Indians, Alaskan Natives, Asians and Pacific Islanders.

(f) *Members of Minority Groups.* *Members of minority groups* includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(g) *Passive Equity.* *Passive equity* shall mean:

(1) For corporations, non-voting stock or stock that includes no more than fifteen percent of the voting equity;

(2) For partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(h) *Control Group.* A *control group* is an entity, or a group of individuals or entities, that possess *de jure* control and *de facto* control of an applicant or licensee, and as to which the applicant's or licensee's charters, articles of incorporation, bylaws, agreements and any other relevant documents (and amendments thereto) provide:

(1) That the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation;

(2) That the entity and/or its members receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock of a corporation;

(3) That, in the event of dissolution or liquidation of a corporation, the entity and/or its members are entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and

(4) That the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to its interest in the total equity of the applicant or licensee.

NOTE TO PARAGRAPH (h): Voting control does not always assure *de facto* control, such

## § 24.403

as, for example, when the voting stock of the control group is widely dispersed (*see, e.g.*, § 24.720(e)(2)(iii)).

(i) *Affiliate*. Determinations regarding whether an individual or entity will be considered an *affiliate* of:

(1) An applicant or

(2) A person holding an attributable interest in an applicant under paragraph (b)(2) will be made pursuant to the general affiliation rules set forth in § 24.710(l).

[59 FR 44071, Aug. 26, 1994, as amended at 62 FR 27511, May 20, 1997]

EDITORIAL NOTE: At 62 FR 27511, May 20, 1997, § 24.320(e) was revised to read as set forth in the text.

## Subpart G—Interim Application, Licensing and Processing Rules for Narrowband PCS

SOURCE: 59 FR 26749, May 24, 1994, unless otherwise noted.

### § 24.403 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

### § 24.404 Eligibility.

(a) *General*. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under the applicable laws and the regulations, policies and decisions issued under the laws, including §§ 24.101 and 24.12;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) *Alien ownership*. A narrowband PCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign

## 47 CFR Ch. I (10–1–99 Edition)

government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license. A Narrowband PCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

[59 FR 26749, May 24, 1994, as amended at 61 FR 55581, Oct. 28, 1996]

### §§ 24.405–24.414 [Reserved]

### § 24.415 Technical content of applications; maintenance of list of station locations.

(a) All applications required by this part shall contain all technical information required by the application forms or associated public notice(s). Applications other than initial applications for a narrowband PCS license must also comply with all technical requirements of the rules governing the narrowband PCS (see subparts C and D as appropriate). The following paragraphs describe a number of general technical requirements.

(b) Each application (except applications for initial licenses filed on Form 175) for a radio station authorization for narrowband PCS must comply with the provisions of §§ 24.129 through 24.135.

(c)—(i) [Reserved]

(j) The location of the transmitting antenna shall be considered to be the station location. Narrowband PCS licensees must maintain a current list of all station locations, which must describe the transmitting antenna site by its geographical coordinates and also by conventional reference to street number, landmark, or the equivalent. All such coordinates shall be specified